

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

UNITED STATES OF AMERICA

v.

ERRICK STEVEN TOA

Case No. 3:20-mj-312

Filed Under Seal

AFFIDAVIT IN SUPPORT OF
A CRIMINAL COMPLAINT

I, Eric Hellekson, a Special Agent (“SA”) with the Federal Bureau of Investigation (“FBI”) being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I have been a Special Agent with the FBI since August 2003. I am currently assigned to the Minneapolis Division, Fargo Resident Agency. In connection with my official FBI duties, I have investigated, among others, cases involving counterterrorism, wire fraud, and financial crimes, narcotics, and kidnapping, assault, murder and other violent crimes.

2. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that violations of Title 18, United States Code, Section 231 – Civil Disorder, has been committed by ERRICK STEVEN TOA.

3. The statements contained in this affidavit are based on: my personal observations; information provided to me by other agencies; written reports about this and other investigations that I have received, directly or indirectly, from another law enforcement agent; independent investigation; and my experience, training and

background as a Special Agent with the FBI. Since this affidavit is being submitted for the limited purpose of securing an arrest warrant, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause for a violation of Title 18, United States Code, Section 231 – Civil Disorder, has been committed by ERRICK STEVEN TOA.

This Affidavit is submitted in support of a Criminal Complaint against ERRICK STEVEN TOA, charging him with violating Title 18, United States Code, Section 231(a)(3). The elements of this offense are:

- a. A civil disorder existed at the time of the alleged violation;
- b. Such civil disorder obstructed, delayed, or adversely affected commerce, or the movement of any article or commodity in commerce, in any way or to any degree;
- c. One or more law enforcement officers were engaged in the lawful performance of their official duties incident to and during the commission of such civil disorder;
- d. The defendant committed an act, or attempted to do so, for the intended purpose of obstructing, impeding, or interfering, either by herself or with someone else, in a violent manner such law enforcement officers; and
- e. Such act, or attempt to act was done willfully and knowingly.

PROBABLE CAUSE

4. The United States is investigating criminal acts that occurred during a riot in downtown Fargo, North Dakota on May 30, 2020, wherein multiple individuals engaged in riotous behavior in violation of 18 U.S.C. § 231. TOA has been identified as one of the individuals responsible for attempting to obstruct, impeded, or interfere with any law enforcement officer, and obstruct, delay, or adversely affect commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function; incident to and during the commission of a civil disorder.

5. The United States Postal Service, Fargo Processing and Distribution Center, located at the Federal Building, 657 2nd Avenue N, Fargo, ND, is a 24 hour operation that does not normally close. Due to civil disorder on May 30, 2020, the District Manager shut down operations and evacuated the building. Due to the escalation of the civil disorder, the USPS curtailed mail delivery in many areas of downtown at the direction of Fargo Police. Due to many rioters in the streets of downtown Fargo, the Fargo Police were forced to shut down roadways and redirect traffic away from downtown as evidenced by Fargo Police Department's Twitter account on May 30, 2020 which was viewed by your affiant. At 6:00 pm on May 30, 2020, Fargo Police posted a tweet to warn the Fargo community to avoid downtown. The tweet read, "AVOID DOWNTOWN FARGO. Protesters are not peaceful anymore."

6. By way of background, on May 25, 2020, George Floyd was involved in an encounter with several members of the Minneapolis Police Department (MPD) in Minneapolis, MN. The encounter resulted in Floyd's death and eventual state criminal charges against one of the MPD officers. Mass nationwide protests, including a protest in Fargo, resulted from Floyd's death and the officer's actions. The Fargo protest consisted of largely First Amendment protected activity, and the groups were largely non-violent. However, peaceful activity escalated to substantial criminal activity in downtown Fargo, to include obstruction of commerce, assault, and vandalism aimed at law enforcement. On May 30, 2020, several people gathered near the intersection of First Avenue N. and Broadway Avenue in Fargo, ND, one of which, was later identified by FPD as TOA.

7. On 5/30/2020, TOA was observed and heard by Fargo Police acting aggressive, claiming he was a "blood". TOA was observed throwing a water bottle at an occupied Fargo Police squad car. Fargo Police observed TOA jump onto the bumper of occupied FPD squad car 87, then the hood of occupied FPD squad car 72. While yelling and waving his arms, TOA stomped in and broke the windshield of occupied squad car 72. TOA was observed by Fargo Police punching a civilian in the face at which time he was taken into custody by Fargo Police. During transport to Cass County Jail in squad car, TOA admitted to breaking the "window", and on two occasions threatened to punch the transporting Fargo Police Officer. All above incidents with TOA mentioned were captured on a variety of video recordings which were collected by the Fargo Police and viewed by your affiant.

8. Based upon these events, there is probable cause to believe that violations of 18, United States Code, Section 231 – Civil Disorder, has been committed by ERRICK STEVEN TOA.

REQUEST FOR SEALING

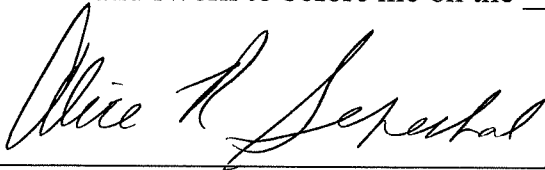
9. I further request that the Court order that all papers in support of this application, including the affidavit and arrest warrant, be sealed until further order of the Court. These documents discuss an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may seriously jeopardize that investigation.

Respectfully submitted,



Eric L. Hellekson
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before me on the ^{7th}~~8th~~ day of July, 2020



Alice R. Senechal
UNITED STATES MAGISTRATE JUDGE